

Helsinki Commission Hearing

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Seeking Justice and Freedom in Belarus

Testimony of Siarhej Zikratski,
Representative on Legal Affairs, Office of Sviatlana Tsikhanouskaya

Dear members of the Commission!

I am Siarhej Zikratski and I am Sviatlana Tsikhanouskaya's Representative on Legal Affairs. I have been practicing law in Belarus as a consultant and attorney for 10 years. In March 2021 I was expelled from the Bar Association.

It is an honor for me to testify at the "Seeking Justice and Freedom in Belarus" hearing in the U.S. Helsinki Commission.

Background

Since May 2020 when the presidential election campaign was announced in Belarus, citizens of Belarus have faced increasing restrictions of their rights and fundamental freedoms, the lack of independent judiciary, and the refusal of state bodies to follow the law. This especially concerns cases of the election law, the right of citizens to peaceful assemblies and the right to express their opinions - all the things that affected the political activity of citizens.

Back in the summer of 2020, lawyer Maxim Znak called the situation in Belarus a "Legal Default" - it means the refusal of the state to obey its own laws. In September 2020, a few months after he used this term for the first time, Maxim Znak was detained and placed in pre-trial detention, and one year later, in September 2021, he was sentenced to 10 years in prison.

After the 2020 elections, the situation with rights and freedoms in Belarus has been getting worse and worse. The peaceful protests that followed the elections were brutally cracked down. Special equipment, stun grenades, and rubber bullets were used to suppress them. Several people were killed by the security forces. The deaths of several more people were not properly investigated. To date, we are talking about 10 deaths which are either directly related to the protests or there is reason to believe that they are, and the authorities have not provided convincing evidence to the contrary.

During the 3 days after the elections, more than 7,000 people were detained for participating in peaceful protests. In total, more than 37,000 citizens have been administratively detained from the summer of 2020 to the present day. Human rights defenders speak about almost 50 thousand Belarusians who have been subjected to repressions in various forms. The most popular violation for which Belarusian citizens were held administratively liable in 2020 and 2021 was "the violation of the order of organizing and holding mass events". Obviously, the prosecution for participation in peaceful protests in itself indicates a lack of respect for human rights. The fact that this article in the Code of Administrative Violations is the main article under which the state holds people accountable speaks of a total violation of human rights.

1. Criminal liability for people participating in protests and expressing their opinions

In addition to administrative responsibility, the state also uses criminal responsibility to punish politically active citizens.

On September 15, 2021, 13 people who had been previously convicted of politically motivated charges were granted clemency. This figure might seem significant, but it pales in comparison with those who remain political prisoners to date. As of September 17, 2021, 666 people are still recognized as political prisoners.

At the same time, the actual number of people who are imprisoned on politically motivated charges is much higher. This can be explained by the fact that families of prisoners do not always want their relatives to be recognized as political prisoners since this status may lead to harsher treatment. Also, not all criminal cases come to the attention of human rights organizations.

The Investigative Committee of Belarus itself stated that more than 4,600 criminal cases related to the protest activity of Belarusian citizens have been opened since the election 2020. Therefore, the number of persons who are prosecuted or may be prosecuted for politically motivated cases is many times higher than the number of political prisoners recognized by human rights organizations.

My analysis shows that the greatest number of citizens are prosecuted under such articles as: "Mass riots", "Organization and preparation of actions that grossly violate public order, or active participation in them", "Violence or the threat of violence against a member of the Interior forces", "Insulting the President of the Republic of Belarus" and "Insulting a public official".

As an example of a politically motivated case, I will refer to the case of journalists Ekaterina Bakhvalova (pseudonym - Catarina Andreeva) and Daria Chultsova. I have enough reasons to speak about this case, because I defended Ekaterina Bakhvalova. These journalists were live-streaming a peaceful protest from the apartment building. At some moment they went outside and interviewed the protesters to broadcast the interview on air. On the same day they were detained and later sentenced to two years' imprisonment for allegedly organizing and actively participating in group actions that grossly violated public order. The court decided that the journalists were organizing the protest actions by broadcasting what was going on in the square live. The fact that they stepped on the roadway when interviewing the protesters was regarded by the court as active participation in the actions that grossly violate public order. Ekaterina Bakhvalova and Daria Chultsova were recognized as political prisoners.

I am absolutely confident that all 666 citizens who have been recognized as political prisoners as of September 17, 2021, are detained unreasonably and their detention was politically motivated.

2. The Torture of Protesters

During the first 3 days after the elections, August 9-11, 2020, more than 7,000 people were detained. Most of them were subjected to torture and degrading treatment. People were held in overcrowded facilities. According to eyewitness accounts obtained by the International Committee for the Investigation of Torture, jail cells designed for 4 people and about the size of 12 m², were filled by 35-50 people, an average of 4 per 1 m². People were suffocating, some had panic attacks, some fainted due to lack of oxygen. Many women tried for a long time not to go to the toilet, as there was not enough oxygen anyway. There is ample

evidence that the detainees were beaten, humiliated, and threatened with sexual violence. Many relatives were unable to find their beloved family members for several days.

In 2020-2021 in all places of detention, the administrations of these institutions, on the direct order of the Ministry of the Interior, create "special conditions" for political detainees and arrestees, which are inherently inhuman acts consisting in the intentional infliction of severe suffering or serious bodily harm or serious damage to mental or physical health.

According to eyewitness testimony received by the International Committee for the Investigation of Torture mattresses and bed linen were not provided. Books, envelopes, notebooks and writing materials were taken from the care packages. Every day, half a bucket of water with bleach was poured into the cell with detainees still there. Detainees were forced to breathe toxic fumes. Torture by lack of sleep was practiced.

According to the official information, almost 5,000 appeals were filed to law-enforcing bodies in connection with bodily injuries inflicted by law-enforcers. However, not a single criminal case was initiated in Belarus.

3. Violation of the Right to a Fair Trial and Prosecution of Lawyers

Violations in administrative and criminal cases.

The lack of justice is evidenced by the manner in which the trials of the protesters have been and are being conducted. I have sufficient evidence to speak about such trials, as I participated in them myself as a defender.

Here are the main violations of the right to a fair trial that still take place in the courts of politically motivated administrative cases in Belarus:

- detainees are not provided with an attorney, even in cases where they have contracts with an attorney and insist on calling them;
- detainees are not given the opportunity to inform their relatives of their detention;
- the right to participate directly in the court session is not ensured, since all sessions take place via videoconferencing. A detainee is in the temporary detention facility, while the court session takes place in the courthouse;
- the right to confidential and unrestricted communication between the client and his/her lawyer is not ensured. The first communication of a detainee with a lawyer takes place after the beginning of the trial. At the same time such communication in the absolute majority is limited to 5, in rare cases 10 minutes and is not confidential. There is a court secretary together with the lawyer in the courtroom, and there is a guard together with the detainee in the temporary detention facility;
- lawyers are not provided with adequate opportunities to study the case. Often they are given about an hour to study the case, and lawyers are not allowed to make copies or take pictures of the case file;
- most often court rulings are based solely on police officers' testimony, while they do not disclose their names and oftentimes testify under masks that hide their faces;
- the ability of lawyers to protect their clients is limited: lawyers' petitions to call witnesses, request video surveillance records and information from mobile operators about the location of the client are often rejected by the court.

During the investigation and consideration of criminal cases there are also violations of the right to a fair and open trial.

Firstly, all participants in criminal proceedings are warned about the inadmissibility of dissemination of preliminary investigation data, for which criminal liability is provided. At the same time, the very concept of preliminary investigation data is interpreted as broadly as possible. Defenders are not allowed to disclose not only the type of investigative action, but even the status of their client (witness, suspect, accused), the nature of the charges and the articles of the criminal code which the client is accused of violating.

At the same time, state media often disclose false information about the accused, while the accused themselves and their defenders have no opportunity to refute this information, since they have no right to disclose any information about the case at all.

Secondly, many cases against activists are held in closed court sessions. This is explained by the alleged presence of extremist materials in the case files. Although the obvious reason is the unwillingness of the authorities to show the lack of proper evidence of the guilt of the accused. Cases against Maxim Znak and Maria Kolesnikova were heard in closed trials, the case against Siarhej Tsikhanouski is currently being considered in closed trials.

In those cases where hearings are open, they are not accessible to all comers. Often courtrooms are filled with unknown persons who had taken their seats even before the doors to the hall were open to all comers.

The Ministry of Foreign Affairs of Belarus prohibited the staff of diplomatic missions based in Minsk to attend court trials without its prior permission. The security services started persecuting the volunteers who used to go to the court hearings, where they observed and recorded the information about the persons held administratively and criminally liable.

Attorney Maxim Znak was sentenced to 10 years in prison

On September, 6, 2021 Minsk regional court found Maxim Znak guilty under 3 articles of the Criminal Code of Belarus - conspiracy to seize power, creation of an extremist organization and public calls for actions threatening national security - and sentenced him to 10 years in jail.

Maxim Znak was an attorney for the leader of the 2020 presidential election campaign Viktor Babaryko. After Viktor Babaryko was not registered as a candidate for presidential election Maxim Znak joined the electoral headquarters of Sviatlana Tsikhanouskaya.

After the elections of 2020 Maxim Znak was one of the members of the Presidium of the Coordinating Council, whose main goal was to solve the political crisis and encourage negotiations between the citizens and the authorities.

Maxim Znak was prosecuted for his activities in advising the leaders of the presidential election campaign and attempts to organize a dialogue between the state and its citizens.

Prosecution of lawyers is of a systemic nature

The Belarusian authorities prosecute lawyers who defend protesters, activists, journalists, as well as those lawyers who actively express their position. During the last year about 30 lawyers have been expelled from the bar. This is a significant figure, as the number of lawyers who dealt with "political" cases was estimated at about 100 to 200.

Thus, the bar association expelled:

- Alexander Pylchenko - defender of Viktor Babaryko and Maria Kolesnikova
- Liudmila Kazak - defender of Maria Kolesnikova
- Dmitriy Laevsky - defender of Victor Babaryko and Maxim Znak
- Andrei Mochalov - defender of journalist Ekaterina Bakhvalova

- Anton Gashynski - defender of political consultant Vitaly Shklyarov and journalist Andrei Aleksandrov

A new law was passed depriving lawyers of their independence

Amendments to the Law on Advocacy were adopted in the spring of 2021, aimed at depriving the bar of its independence and establishing full control by the Ministry of Justice over the activities of lawyers.

Here are the main changes to the law:

- candidates for the position of members of the Council of the Bar must be approved by the Ministry of Justice in advance. Previously, no such approval was required;
- before taking the bar examination, a traineeship in the Bar is required. The Ministry of Justice approves the list of trainees. Previously, the list of trainees was determined solely by the Council of the Bar;
- to become a lawyer, former employees of courts, police, and investigative agencies do not have to pass an exam, but pass an oral interview. Previously, all candidates without restrictions had to pass an exam;
- the only form of lawyers' work is "consultations", which are created by bar associations. The operating procedures of "consultations" are determined not by the lawyers themselves, but by the head of the "consultation". The head of the "consultation" is approved by the Ministry of Justice. Earlier there were also other forms of advocacy - advocates' bureaus, which were created and operated by lawyers themselves, and also lawyers were entitled to work individually;
- the budget of the Bar Associations is now approved by the Councils of the Bar (whose members are supposed to be approved by the Ministry of Justice). Previously, the budget was approved at a general meeting of the bar associations.

4. Discrimination

There are many facts of discrimination against citizens because of their political views and opinions that occur in all spheres of society. Athletes are excluded from national teams, teachers and doctors are fired, lawyers are excluded from the bar, students are expelled, professors who try to protect them are fired, and the list goes on.

Since August 2020, more than 100 doctors and nurses, 35 athletes and coaches and more than 160 students have been fired or expelled for political reasons.

Here are just a few examples.

Nikolay Kozeko, the head coach of Belarusian national freestyle skiing team, a coach of the 4 Olympic champions, was excluded from the national team training process, deprived of his responsibilities as the head coach and the opportunity to prepare athletes for the Olympic qualification events, stripped of his scholarship and subjected to pressure by Belarusian sports authorities for signing the Open Letter and expressing in mass media his position against violence and political repression. Belarusian sports authorities considered his expression of opinion as non-conforming to the government policy.

Elena Baranova, a cardiologist with 25 years of experience, was fired from the Republican Scientific and Practical Center "Mother and Child" for commenting on a colleague's post on Facebook. Baranova expressed her attitude toward the riot police officers, in particular, that

she "will never forgive them for her son" (as her son was detained in September and spent several days in a detention center).

Andrei Vitushko, a pediatric neonatologist and intensive care physician who had worked at the Republican Scientific and Practical Center "Mother and Child" for more than 20 years, was fired in December 2020. His contract was not renewed without explanation. According to an unofficial version, the reason for his dismissal was his arrest in August 2020 and the desire of the clinic management to get rid of the doctor, who is associated with protest activity.

The chief doctor of Minsk Children's Hospital #3 Maksim Ocheretny was also fired. There is reason to believe that it was due to him signing for Viktor Babaryko before the elections, as well as the fact that he hired two doctors who had been previously fired from other hospitals for political reasons.

Ilya Silchukov, a leading soloist of the Bolshoi Opera and Ballet Theater and winner of 16 international vocal competitions, was fired from the theater for participating in a video message against violence.

In Mogilev State University practically all teachers, who were seen at mass protest actions or were found to be disloyal to the authorities of Belarus, were warned about dismissal.

5. What the international community can do to restore justice and freedom in Belarus

Here are main steps which the international community can do to restore justice and freedom in Belarus:

- not recognize the legitimacy of Lukashenko. It is obvious that Lukashenko did not win the last election and cannot be recognized as the president of Belarus. Lukashenko and representatives of official state bodies cannot be invited in any official status to any events. Communication with them is possible only to establish a potential dialogue.

- to use international legal mechanisms of human rights protection. Apart from individual complaints filed by the citizens of Belarus with international institutions, it is also necessary to use country complaints, which are stipulated by a number of conventions. In particular, Article 30 of the Convention against Torture and Article 41 of the International Covenant on Civil and Political Rights can be used.

- to gather information on human rights violations in Belarus, record evidence of crimes, institute and investigate criminal proceedings under the principle of universal jurisdiction.

- specialized organizations (associations of doctors, lawyers, journalists, trade unions) can continue to apply pressure on Belarus.